

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-80
Table of Allotments,)	RM-10875
FM Broadcast Stations.)	
(St. Florian, Alabama))	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 4, 2005

Released: May 9, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued at the request of American Family Association ("Petitioner") proposing the reservation of vacant Channel 274A at St. Florian, Alabama for noncommercial educational ("NCE") use. Petitioner, Starboard Media Foundations, Inc., ("Starboard Media") and Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") filed comments. Petitioner filed reply comments. BCB, Inc., licensee of Station WBCF(AM), Florence, Alabama, filed rebuttal comments and a Request to Correct the Record.

2. **Background.** In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* ("NCE Report and Order"), the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.² Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 201 through 220) and the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m contour of the proposed station. Originally, the Commission limited this expanded reservation criteria to future allotment proceedings. Thereafter, the Commission extended the expanded criteria to existing vacant FM allotments for which a *Notice of Proposed Rule Making* had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.³ In a *Public Notice* released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*.⁴

3. As set forth in the *Notice*, Petitioner filed a proposal requesting the reservation of vacant Channel 274A at St. Florian, Alabama for NCE use at reference coordinates 34-57-8 NL and 87-39-30 WL. Additionally, the *Notice* provided an opportunity for an opposing party to file rebuttal comments identifying a site at which a reserved channel could be assigned with facilities fully equivalent to the proposed reserved allotment. Such an alternate reserved channel proposal also must satisfy the first and/or second NCE radio service criterion. Alternatively, a party may file comments demonstrating that

¹ *St. Florian, Alabama*, 19 FCC Rcd 5333 (MB 2004) ("Notice").

² 15 FCC Rcd 7386 (2000).

³ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* ("NCE Second Report and Order"), 18 FCC Rcd 6691 (2003).

⁴ *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, 18 FCC Rcd 19600 (MB 2003) ("Public Notice").

the reservation proposal would not, in fact, provide a first and/or second NCE radio service to ten percent of the population within the 1 mV/m contour of the proposed station.

4. **Comment Summary.** Petitioner filed comments restating its interest in the NCE reservation of vacant Channel 274A at St. Florian. Starboard Media filed supporting comments stating that it would file an application for vacant Channel 274A at St. Florian, if reserved for NCE use.

5. Clear Channel filed comments proposing an alternative reference site (34-50-12 NL and 87-37-27 WL) for the proposed NCE reservation of vacant Channel 274A at St. Florian to accommodate its petition, proposing the reallocation of Channel 274C1 from Memphis to Arlington, Tennessee.⁵ Clear Channel submitted a technical showing demonstrating that the alternative reference site for vacant Channel 274A at St. Florian complies with the Commission's minimum distance separation requirements and would provide a first or second NCE service to at least 20,089 persons (15 percent) within the proposed 60 dBu contour.

6. Petitioner filed reply comments supporting Clear Channel's alternative site for the NCE reservation of vacant Channel 274A at St. Florian. Petitioner agrees that the proposed alternative site would provide the requisite first or second NCE service to at least ten percent of the population within the proposed 60 dBu contour of the station. As such, Petitioner requests the reservation of vacant Channel 274A at St. Florian for NCE broadcasting.

7. BCB, Inc. filed a Request to Correct the Record with respect to the timeliness of its comments. BCB, Inc. hand-delivered its comments to the Commission on May 17, 2004, the comment deadline in this proceeding. BCB, Inc. addressed its comments to the Chief, Audio Division, Media Bureau, which resulted in the receipt of a bureau/office mail stamp. Thereafter, the comments were re-stamped by the Office of the Secretary on May 18, 2004 because all filings pertaining to FM allotment proceedings must be submitted to the Office of the Secretary. Any filing that is not addressed to the Office of the Secretary receives an Office of the Secretary's date stamp on the day it is received in that office.⁶ Any such filing is treated as filed on the date it is received by the Office of the Secretary. Accordingly, BCB, Inc. filing was untimely. We note that this filing was made before a recent change in the standard notice of proposed rulemaking language, which emphasizes this filing requirement for all submissions in FM allocation proceedings. Accordingly, we waive the filing deadline in this instance. We note, again, that failure to follow the specified requirements will result in the treatment of a filing as filed on the date it is received in the Office of the Secretary.⁷ This processing rule will be strictly followed.

8. BCB, Inc. filed rebuttal comments opposing the reservation of vacant Channel 274A at St. Florian for NCE use. BCB, Inc. states that the Petitioner's proposal is flawed. Specifically, BCB, Inc. contends that the Petitioner's calculations are inconsistent with respect to existing construction permits for NCE stations. In this regard, two NCE stations, Station WFIX, Florence, Alabama and Station WDNX, Olive Hill, Tennessee, operate on reserved channels that provide partial coverage in the proposed service area for Channel 274A at St. Florian. Both stations currently have construction permits to upgrade their facilities. Moreover, BCB, Inc. submitted an engineering report demonstrating that a new NCE station could be established on reserved Channel 213, using a directional antenna at coordinates 34-57-08 NL and 87-33-09 WL with an effective radiated power of 2.8 kW at 100 meters height above

⁵ See *Arlington and Memphis, Tennessee and Saint Florian, Alabama*, rel. March 23, 2005, DA 05-746, MB Docket No. 05-140.

⁶ See 47 C.F.R. § 1.7.

⁷ See *Filing Requirements in FM Allotment Rulemaking Proceedings*, DA 05-995, released April 1, 2005.

average terrain. BCB, Inc., states that it intends to file an application for vacant Channel 274A at St. Florian, if the NCE reservation request is denied.

9. **Discussion.** Accordingly, we deny the Petitioner's proposal requesting the reservation of vacant Channel 274A at St. Florian for NCE use. Our staff engineering analysis determines that reserved Channel 213 is available for NCE use. The proposed operating parameters for Channel 213 meets the 10 percent requirement using either the construction permit parameters or licensed parameters for Stations WFIX and WDNX. Channel 213 would not cause interference to or receive interference from adjacent channel stations using contour protection. Moreover, Channel 213 meets the spacing requirement to TV6 station WBRC at Birmingham, Alabama. Therefore, we conclude that Channel 213 is available for NCE use. As a result, we will not reserve vacant Channel 274A at St. Florian for NCE use.

10. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.

11. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by American Family Association, IS DENIED.

12. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
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